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Forfeiture Of Property (Cont)



34. (1) An order under subsection (1) of section 31—
(a) shall, in the case of an order against a person referred to in paragraph (a) of subsection (1), cease to remain in force if no application to the Court under section 16 is filed by the Attorney-General against that person within fourteen days after date of the service of the order;
(b) shall, in the case of an order against a person referred to in paragraph (b) of subsection (1) cease to remain in force if that person is not charged with an offence under this Law within fourteen days of the date of the service of the order;
(c) shall cease to remain in force if the Court records a finding under subsection (2) of section 18 that the person named in the order is not a liable person, or in the case of a person prosecuted for an offence, if he is acquitted of the offence;
(d) shall cease to apply to any property in respect of which the court records a finding under subsection (2) of section 18 that it is not illegal property.
(2) Where an order under subsection (1) of section 31 ceases to remain in force, or ceases to apply to any property that cessation shall not be a bar to any fresh order being made at any time against any person to whom the earlier order applied, or in respect of any property affected by the earlier order. Provided that the fresh order shall relate to a fresh application or a fresh prosecution.
(3) Where an order under subsection (1) of section 31 is in force in relation to any property, a police officer may, for the purposes of preventing that property from being removed from Ghana, seize that property; and any property so seized shall be dealt with in accordance with the directions of the court.
(4) No information obtained under this section shall be admissible in evidence in the trial of any person from whom it was obtained if it is proved that it was obtained by duress.

35. (1) Any movable property which an authorised police officer reasonably suspects to be the subject matter of an offence

under this Law or which has been used for the commission of that offence, or is illegal property, shall be liable to seizure.

(2) Whenever any movable property is seized under subsection (1), the officer effecting the seizure, shall as soon as practicable, serve a notice in writing of the seizure and the grounds for the seizure on the owner of the property, if the owner and his whereabouts are known:
Provided that the notice shall not be required to be served where the seizure is made in the presence of the person against whom proceedings under Part III are intended to be taken, or in the presence of the owner of that property or his agent, or in the case of an aircraft, in the presence of the pilot.

(3) Subsection (1) shall not apply to any aircraft belonging to any person carrying on a regular lawful passenger or freight service within Ghana or to and from Ghana except where prosecution for an offence under this Law is to be instituted, or proceedings under Part III are to be taken, against the owner of the aircraft.

36. (1) Where a police officer of or above the rank of Assistant Commissioner of Police reasonably suspects that any immovable property is the subject matter of an offence under this Law, or is illegal property, the property shall be liable to seizure, and the seizure shall be effected—

(a) by posting, where practicable, a copy of the notice of seizure in a conspicuous position on the immovable property;
and (b) by lodging a copy of the notice of seizure at the Lands Title Registry.

(2) The Lands Registrar shall make an entry in the Register kept in his office of the terms of the notice of seizure of the immovable property.

(3) The entry made under subsection (2) shall have the effect of prohibiting all dealings in respect of the immovable property and accordingly, after the notice has been lodged with the Lands Registrar, no dealing in respect of the immovable property shall be registered, whether it was lodged before or after the lodging of the notice of seizure or the making of the entry.

(4) Subsection (3) shall not apply to a dealing effected under this Law by a public officer in his capacity as such officer, or otherwise by or on behalf of the

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Government.

37. (1) After seizure of any property has been effected under this Dealings in Law, and so long as the seizure remains in force, any dealing, contract, or seized other thing whatsoever, effected, done, or entered into by a person or after secure between any persons in respect of the property, except any dealing to be void, effected under this Law by a public officer in his capacity as such officer, or otherwise by or on behalf of the Government or a local authority or other statutory body shall be void, and shall not be registered or otherwise given effect to by any person or authority.

(2) Subsection (1) shall be in addition to and not in derogation of subsections (3) and (4) of section 36.

(3) While a seizure of any property under this Law remains in force—

(a) no action, suit or other proceedings of a civil nature, shall be instituted, or if it is pending immediately before the seizure, be maintained or continued in any court or before any other authority in respect of the property which has been seized,

(b) and no attachment, execution or other similar process shall be commenced, or if any process is pending immediately before the seizure, be maintained or continued in respect of that property on account of any claim, judgment or decree, whether the claim was made, or the judgment or decree was given, before or after the seizure was effected, except at the instance of the Government or except with prior consent in writing of the Attorney-General.

38. Where seizure of any property has been effected under this Law the validity of the seizure, or of any sale or other form of disposal of the property, or of any destruction of it in accordance with this Law, shall not be affected by any omission or any failure to conform to any procedural provision of this Law or of any other law in effecting the seizure or sale.

39. (1) Where property has been seized under this Law an authorised police officer other than the police officer who effected the seizure, may at any time, before it is forfeited under this Law release the property to such person as he considers to be lawfully entitled to the property if he is satisfied that the property is not liable to forfeiture under this Law or under any law and is not otherwise required for the purpose of any proceedings under this Law, or any other law.

(2) Where a release has been effected under subsection (1) neither the officer effecting the seizure, nor the state nor any person acting on behalf of the Government, shall be liable to any civil proceedings by any person.

(3) A record in writing shall be made by the officer effecting any release of any property under subsection (1) specifying in detail the circumstances of, and the reason for, the release, and he shall send a copy of the record to the Attorney-General and to the Inspector-General of Police within seven days after the release.

40. (1) Where any property has been seized under this Law, other than under or by virtue of Part VI, and—

(a) no prosecution for any offence under any law is instituted with regard to property;

(b) no proceedings are commenced by the Attorney-General for the forfeiture of the property under Part III; or

(c) no claim in writing is made by any person that he is lawfully entitled to the property or that it is not liable to forfeiture under this Law or any other law, within six months from the date of its seizure, the property shall become forfeited immediately upon the expiration of the period of six months.

(2) Where within six months from the date of the seizure of any property under this Law, a claim in writing is made by any person to that property in terms of paragraph (c) of subsection (1)—

(a) the Attorney-General may release the property to the claimant if he is satisfied that there is no dispute as to the ownership of the property and that it is not liable to forfeiture; or

(b) where the Attorney-General is satisfied that there is a dispute as to the ownership of the property or doubt as to the person who owns it, or whether it is liable to forfeiture, he shall, within fourteen days after the expiry of the period of six months, refer the claim to a court for its decision.

(3) This section shall be without prejudice to the power of a police officer to release from seizure any property under section 39.

PART 4 —Forfeiture

41. (1) Where any property is forfeited under this Law the property shall vest in the State free from any right, interest or encumbrance of any person except a right, interest or encumbrance which is held by a purchaser in good faith for valuable consideration and which is not otherwise void under any provision of this Law.

(2) Where any person who holds any encumbrance to which the property is subject claims that he holds the encumbrance as a purchaser in good faith for valuable consideration and that the encumbrance is not otherwise null and void any provision of this Law, and the State disputes the claim, the Attorney-General may apply to a court to determine the question and the court shall determine the question after hearing the person holding the encumbrance and the reply of the Attorney-General.

(3) Where any property is vested in the State under subsection (1), the vesting shall take effect without any transfer, conveyance deed or other instrument whatsoever and where any registration of the vesting is required under any law, the authority empowered to effect the registration shall do so in the name of such public officer or such authority, person or body as may be specified.

(4) Where the property which has vested in the State under subsection (1) is immovable property the vesting shall be registered in the name of the Republic upon production to the Lands Registrar of the order of the court forfeiting the immovable property, or in case of property forfeited under subsection (1) of section 40, of a certificate of the Attorney-General certifying that it has been forfeited under that subsection.

PART 5—Assistance to Foreign Countries

42. Where a foreign government requests the Ghana Government or1 where a foreign authority requests the Ghanaian authority, for assistance in Ghana in relation to any drug-related matter in the foreign country, the Ghanaian authority shall, on the direction of the Attorney-General or may j at its own instance, render all or any assistance requested to the extent j and in the manner provided under this Part.

43. The Ghanaian authority shall obtain or ascertain all particulars or] information in respect of any person, body, business, enterprise or place, including copies of documents or official records of any department of the Government or any statutory body, or any agency of the Government or any extracts from any documents or official records, as may be available to him or as are capable of being lawfully obtained or ascertained by him, or as may be voluntarily furnished.

44. (1) The Ghanaian authority shall cause to be served by any police officer on any person or body in Ghana any process or document issued by any person, authority or court in any foreign country.

(2) Non-compliance with any requirement contained in that process or document shall not render the person or body which is required to comply with the requirement liable to any penalty or liability in Ghana under any Ghanaian law, but it shall render him or it liable to every penalty provided under the law of the foreign country concerned in relation to it, including liability to the seizure or forfeiture of any property in Ghana on the order of the authority or court of the foreign country empowered to make the order.

45. (1) The Ghanaian authority may transmit or cause to be transmitted, to the foreign government or foreign authority a copy of the record of any investigation in Ghana by any competent person or authority including a copy of—

(a) any report or any statement recorded from any witness, accused or other persons;

(b) any document received or seized; or

(c) any conclusion or finding of any investigation,

in relation to any offence under this Law, or in relation to any proceeding under Part III of this Law.

(2) Copies of records of investigation may be transmitted under subsection (1) whether or not investigations have been completed and whether or not those investigations have resulted in a trial for an offence under this Law or the institution of proceedings under Part III of this Law, and whatever the outcome of any trial or proceeding that has taken place as a result of the investigations.

46. (1) The Ghanaian authority, shall order in writing or orally any person who is specified by the foreign government or foreign authority, or any other person who is reasonably suspected to have any relevant knowledge or information, to attend before him or any other authorized police officer, to be examined in respect of the drug-related matter specified by the foreign government or foreign authority.

(2) A person to whom an order has been given under subsection (1) shall attend in accordance with the terms of the order to be examined and shall continue to attend from day to day as directed by the authorised police officer conducting the examination until the examination is completed.

(3) A person undergoing an examination under this section shall disclose all information which is within his knowledge, or which is capable of being obtained by him, in respect of the matter for which he is being examined, and where any question is put to him he shall answer the question truthfully and to the best of his knowledge and belief.

(4) A person being examined under this section shall produce all such documents, articles or things as maybe relevant to the examination or as he may be required to produce by the authorised police officer examining him, and the documents, articles or things may be retained in police custody or transmitted to the foreign government or foreign authority.

(5) Nothing contained in subsection (3) and (4) shall be construed as compelling the person who is being examined under this section to disclose any information or produce any document, article or thing which may incriminate him or his lawful spouse for an offence under any law, in Ghana or of the foreign country.

(6) No information or document obtained under this section shall be admissible in evidence at the trial of any person from whom it is obtained if it is proved that it was obtained by duress.

(7) Subject to subsections (5) and (6) any person who contravenes any provision of this section shall be guilty of an offence under this Law.

47. (1) A Magistrate Grade I or a District Tribunal at any place in Ghana may order any person present at any place in Ghana whether or not that place is within the area of jurisdiction of the magistrate or District Tribunal, to appear before him to be examined on oath or affirmation where—

(a) that person has been specified by any foreign government or foreign authority; and

(b) an application for the order has been made to the magistrate or to the District Tribunal by the Attorney-General, upon a request made by the Ghanaian authority.

(2) The examination under subsection (1) shall be in relation to such drug-related matter as may be specified by the foreign government or the foreign authority, and the person shall answer all questions put to him by the Attorney-General or the authorised police officer either at his own instance or in accordance with any written interrogatories received from the foreign government or the foreign authority.

(3) A person ordered by a Magistrate or a District Tribunal to appear for examination under this section shall comply with the terms of the order and shall continue to attend for the examination.

(4) A person who is being examined before a Magistrate or District Tribunal under this section shall be entitled to be represented at the examination by counsel.

- (5) Any person who—
 (a) contravenes subsection (4); or
 (b) fails to answer, or answers falsely, any lawful question put to him during an examination under this section, shall be guilty of an offence under this Law.

48. (1) An authorised police officer shall on the direction of the Ghanaian authority, search or cause to (a) any person or premises specified by the foreign government or foreign authority in a request;
 (b) any person who is or any premises which are, suspected by the authorised police officer to be necessary or expedient to be searched in relation to a request.
 (2) For the purposes of any search under subsection (1), an authorised police officer shall have, and may exercise, any of the powers exercisable by an authorised police officer under this Law.

49. (1) An authorised police officer shall, on the direction of the Ghanaian authority seize any property, or article, the seizure of which is requested by a foreign government or a foreign authority under section 42—
 (a) on the ground that the property is liable to forfeiture under the law of the foreign country; or (b) on the ground that the property or article is required either as evidence or otherwise by the foreign government or authority for the purpose of a drug-related matter.
 (2) Where any movable property, or article is seized under subsection (1), the Ghanaian authority may transmit it to the foreign government on an undertaking by the foreign government that it shall be returned to the Ghanaian authority upon the final conclusion of all proceedings concerning the drug-related matter in the foreign country unless the Government then notifies the foreign government that it does not require its return.
 (3) Where any movable property, or article seized under paragraph (b) of subsection (1) is not transmitted to the foreign government or the foreign authority under subsection (2), or where it is returned to the Government upon the final conclusion of all proceedings concerning a drug-related matter in the foreign country, the Ghanaian authority shall return it to the person from whom it was seized unless it is required for the purpose of any prosecution or proceedings under this Law or under any other law.
 (4) Upon the final conclusion of all proceedings concerning a drug-related matter in relation to which any property was seized under paragraph (a) of subsection (1), the property shall be dealt with, subject to subsections (5) and (6), in accordance with the order of the foreign authority or court in the foreign country which is empowered to make the order by the law of that country.
 (5) Where the order of authority or court in the foreign country requires the property to be returned to that person in Ghana, the property upon its return to the Ghanaian authority shall be returned to that person unless the Ghanaian authority requires that property for the purpose of any prosecution or proceedings under this Law or under any other law.
 (6) Where the order of the foreign authority or the foreign court is a final order for the forfeiture of the property, it shall be deemed to be an order for the forfeiture of it to the Government made by a court in Ghana, and shall, accordingly, be dealt with in accordance with the provisions of this Law applicable to an order for forfeiture by the court.
 (7) For the purposes of subsection (6), "final order" means an order which is not subject to any appeal in the foreign country.
 (8) No person shall be entitled to claim any compensation from the Government of Ghana or the foreign government or from any person or authority acting on behalf of the Government or the foreign government, or under any law in Ghana or the law of the foreign country, in respect of any seizure or disposal or release of any property under any law in Ghana or the law of the foreign country.

50. Where the Ghanaian authority is satisfied that for the purposes of rendering assistance to a foreign authority in relation to any drug-related matter, it is necessary, expedient or desirable for an authorised police officer to exercise the powers under section 27 for the interception of any communication, he may authorise a police officer to exercise the powers of an authorised police officer under section 21.

51. Where, upon being informed by the Ghanaian authority of any request for assistance by a foreign government or a foreign authority under section 42, the Attorney-General is satisfied that it is necessary, expedient or desirable for him to exercise his powers under sections 29, 30 or 31, he may exercise those powers in the same manner and to the same extent as he may exercise them in relation to the matters specified under those sections respectively.

52. (1) Where a request is made by a foreign government or a foreign authority under section 42 for the production before any authority or court in the foreign country as a witness for the prosecution in any proceedings before that authority or court, of any person who is undergoing imprisonment in Ghana or in lawful remand, the Secretary may issue an order for the transfer of that person into the custody of the officer of the foreign country who is designated by that foreign government or foreign authority for the purpose of transporting that person from Ghana to the foreign country and thereafter, to be detained in that country under the custody of such authority or person as may be lawful in that country and produced from time to time under custody before the authority or court in which he is required to attend as a witness.
 (2) Where the attendance of a person as a witness under subsection (1) is no longer required, the person shall be transported, in the custody of an officer of the foreign country, to Ghana and returned into the custody of the Ghanaian officer having lawful authority to take him into custody, and he shall, thereafter continue to undergo the imprisonment, detention or custody which he was undergoing prior to the transfer of his custody under subsection (1).

(3) The period during which the person was under foreign custody under this section shall count towards the period of his imprisonment, detention or other custody in Ghana.

(4) No transfer of any person into foreign custody shall be effected unless the foreign government gives an undertaking to the Government to bear and be responsible for all expenses of the transfer of custody, the up-keep of the person during his foreign custody and the return of the person into Ghanaian custody immediately upon his release from attendance before the authority or court in the foreign country.

53. The Government and any foreign government may enter into any arrangement in respect of the payment by the foreign government to the Government of any expenses incurred by the Government under this Part

54. In this Part, unless the context otherwise requires—
drug-related matter means any investigation, inquiry, trial, or other proceeding in any foreign country under any law relating directly to narcotic drugs or to any property used for or derived from any activity relating to narcotic drugs, whether or not the activity is an offence under that law; or for the forfeiture of property under that law; "foreign authority" means any person designated by a foreign government as authority competent to act on behalf of the foreign government for the purpose of this Law; "Ghanaian authority" means any person designated by the Ghana Government as authority competent to act on behalf of the Government of Ghana for the purposes of this Law.

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